

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Site Works Design, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on August 29, 2005, at 1:30 p.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges dated July 13, 2005, and served on the Respondent, Site Works Design, Inc., at its last known address on file with the Department of Labor and Industry.

Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-02130, appeared on behalf of the Department of Labor and Industry. There was no appearance by or on behalf of the Respondent, Site Works Design, Inc., 1225 Highway 169 North, Suite 2, Minneapolis, MN 55441. The Department requested a default recommendation due to the Respondent's failure to appear at the prehearing conference. The OAH record closed at the conclusion of the prehearing conference on August 29, 2005.

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommended Decision. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to find out about the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions

to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### **STATEMENT OF ISSUES**

This case presents the following issues:

Did the Respondent fail to pay subcontractors and thereby demonstrate financial irresponsibility and a failure to use the proceeds of payments made for construction or improvements to pay for labor, skill, material, and machinery in violation of Minn. Stat. § 326.91, subd. 1(6) and (8)?

Did the Respondent fail to respond to the Department's investigation and thereby violate Minn. Stat. § 45.027, subd. 1a?

Did the Respondent fail to satisfy numerous judgments and thereby demonstrate financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6)?

Is the imposition of discipline against the Respondent in the public interest?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges initiating this contested case proceeding was served on the Respondent via first class mail on July 20, 2005, at the following addresses: Site Works Design, Inc., 1225 Highway 169 North, Suite 2, Minneapolis, MN 55441, Attn: Kevin Kahmann, Qualified Person; and Kevin Kahmann, 13733 Newman Circle, Lindstrom, MN 55045.<sup>[1]</sup>

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges contained the following language:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.<sup>[2]</sup>

4. The Respondent did not make any request prior to the August 29, 2005, prehearing conference for a continuance or any other relief. The Respondent did not

personally appear at the prehearing conference in this matter scheduled for August 29, 2005, or have an appearance made on its behalf.

5. Because the Respondent failed to appear at the prehearing conference in this matter, it is in default.

6. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Statement of Charges included in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against the Respondent under Minn. Stat. §§ 14.50, 45.024, 45.027, subd. 1, and 326.91.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant procedural requirements of law and rule.

3. The Respondent, having made no appearance at the prehearing conference, and not requesting any continuance or other relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Statement of Charges included in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

4. By failing to pay subcontractors, failing to respond to the Department's investigation, and failing to satisfy numerous judgments, the Respondent has violated Minn. Stat. §§ 45.027, subd. 1a and 326.91, subd. 1(6) and (8). The Respondent's license is subject to discipline and the Respondent is subject to censure and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 - 7, and the imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Labor and Industry take appropriate disciplinary action against the residential building contractor license of the Respondent, Site Works Design, Inc., censure the Respondent, and/or impose an appropriate civil penalty against the Respondent.

Dated: September 23, 2005

s/ Barbara L. Neilson  
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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Default (no tape recording).

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<sup>[1]</sup> Affidavit of Service by First Class Mail of Jean-Anne Gates, appended to Notice of and Order for Hearing.

<sup>[2]</sup> Notice of and Order for Hearing at 4, ¶ 1.